

1-1 By: Nichols, Shapiro, Watson S.B. No. 19  
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 19 By: Williams

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the development, financing, construction, and  
1-11 operation of certain toll projects.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle G, Title 6, Transportation Code, is  
1-14 amended by adding Chapter 373 to read as follows:

1-15 CHAPTER 373. TOLL PROJECTS LOCATED IN TERRITORY OF LOCAL TOLL  
1-16 PROJECT ENTITY

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 373.001. DEFINITIONS. In this chapter:

1-19 (1) "Local toll project entity" means an entity, other  
1-20 than the department, that is authorized by law to acquire, design,  
1-21 construct, finance, operate, and maintain a toll project,  
1-22 including:

1-23 (A) a regional tollway authority under Chapter  
1-24 366;

1-25 (B) a regional mobility authority under Chapter  
1-26 370; or

1-27 (C) a county acting under Chapter 284.

1-28 (2) "Toll project" means a toll project described by  
1-29 Section 201.001(b), regardless of whether the toll project is:

1-30 (A) a part of the state highway system; or  
1-31 (B) subject to the jurisdiction of the  
1-32 department.

1-33 Sec. 373.002. APPLICABILITY. This chapter does not apply  
1-34 to:

1-35 (1) a toll project described in Section 228.011;

1-36 (2) Phase 4 extension of the Dallas North Tollway in  
1-37 Collin and Denton Counties from U.S. 380 to the Grayson County line  
1-38 to be developed by North Texas Tollway Authority; or

1-39 (3) the North Tarrant Express project in Tarrant and  
1-40 Dallas Counties (Interstate Highway 820 and State Highway 121/State  
1-41 Highway 183 from Interstate Highway 35 West to State Highway 161,  
1-42 Interstate Highway 820 East from State Highway 121/State Highway  
1-43 183 to Randol Mill Road, and Interstate Highway 35 West from  
1-44 Interstate Highway 30 to State Highway 170).

1-45 Sec. 373.003. PROJECT OWNED IN PERPETUITY. Unless a toll  
1-46 project is leased, sold, conveyed, or otherwise transferred to  
1-47 another governmental entity in accordance with applicable law,  
1-48 including Sections 228.151, 284.011, 366.036, 366.172, and  
1-49 370.171, a toll project procured by the department or a local toll  
1-50 project entity determined by the process under Subchapter B is  
1-51 owned by that entity in perpetuity.

1-52 Sec. 373.004. GOVERNMENTAL AND NOT COMMERCIAL  
1-53 TRANSACTIONS. A transaction involving a local toll project entity  
1-54 under Section 228.011 or this chapter is not primarily commercial  
1-55 in nature but is an inherently governmental transaction whose  
1-56 purpose is to determine governmental jurisdiction, ownership,  
1-57 control, or other responsibilities with respect to a project.

1-58 Sec. 373.005. LEGAL CHALLENGES CONCLUDED. For the purposes  
1-59 of this chapter, all legal challenges to development of a toll  
1-60 project are considered concluded when a judgment or order of a court  
1-61 with jurisdiction over the challenge becomes final and  
1-62 unappealable.

1-63 Sec. 373.006. TOLL PROJECT AGREEMENT. (a) Before

2-1 initiating the primacy determination process under Subchapter B for  
2-2 a toll project, the department and the local toll project entity may  
2-3 enter into a toll project agreement that:

2-4 (1) identifies the responsibilities of each party for  
2-5 project-related activities, which may include the performance of  
2-6 environmental work and traffic and revenue studies; and

2-7 (2) includes an agreement that the primacy  
2-8 determination process under Subchapter B may be initiated earlier  
2-9 than as provided by Section 373.051.

2-10 (b) A toll project agreement may provide an alternative to  
2-11 the primacy determination process under Subchapter B for toll  
2-12 project development, including an alternative timeline for the  
2-13 development of toll project phases.

2-14 Sec. 373.007. EXERCISE OF PRIMACY FOR TOLL PROJECT PHASES.  
2-15 Unless otherwise provided by a toll project agreement under Section  
2-16 373.006 or other agreement, an exercise of primacy under Subchapter  
2-17 B over a phase of a toll project is an exercise of primacy over the  
2-18 entire project, with additional phases to be developed as the  
2-19 entity determines the phases financially feasible.

2-20 [Sections 373.008-373.050 reserved for expansion]

2-21 SUBCHAPTER B. PROCESS TO DETERMINE ENTITY TO DEVELOP, FINANCE,  
2-22 CONSTRUCT, AND OPERATE TOLL PROJECT

2-23 Sec. 373.051. INITIATION OF PROCESS. (a) At any time  
2-24 after a metropolitan planning organization approves the inclusion  
2-25 in the metropolitan transportation improvement program of a toll  
2-26 project to be located in the territory of a local toll project  
2-27 entity, the local toll project entity may notify the department in  
2-28 writing of the local toll project entity's intent to initiate the  
2-29 process described in this subchapter.

2-30 (b) The department may notify the local toll project entity  
2-31 in writing of the department's intent to initiate the process  
2-32 described in this subchapter at any time after a metropolitan  
2-33 planning organization has approved the inclusion in the  
2-34 metropolitan transportation improvement program of a toll project  
2-35 to be located in the territory of a local toll project entity and:

2-36 (1) the department has issued a finding of no  
2-37 significant impact for the project, or for a project for which an  
2-38 environmental impact statement is prepared, the department has  
2-39 approved the final environmental impact statement for the project;  
2-40 or

2-41 (2) for a project subject to environmental review  
2-42 requirements under federal law, the United States Department of  
2-43 Transportation Federal Highway Administration has issued a finding  
2-44 of no significant impact, or for a project for which an  
2-45 environmental impact statement is prepared, the department has  
2-46 submitted a final environmental impact statement to the Federal  
2-47 Highway Administration for approval.

2-48 Sec. 373.052. LOCAL TOLL PROJECT ENTITY OPTION. (a) The  
2-49 local toll project entity has the first option to develop, finance,  
2-50 construct, and operate a toll project. The local toll project  
2-51 entity must exercise its option not later than the later of:

2-52 (1) the 180th day after the date on which notification  
2-53 under Section 373.051(a) is provided or notification under Section  
2-54 373.051(b) is received; or

2-55 (2) if the United States Department of Transportation  
2-56 Federal Highway Administration issues a record of decision for an  
2-57 environmental impact statement submitted by the department under  
2-58 Section 373.051(b)(2) more than 60 days after the date the  
2-59 department provides notice under Section 373.051(b), the 120th day  
2-60 after the date the record of decision is issued.

2-61 (b) The option period under Subsection (a) may be extended  
2-62 an additional 90 days by agreement of the department and the local  
2-63 toll project entity.

2-64 (c) If the local toll project entity exercises the option  
2-65 under Subsection (a), the local toll project entity after  
2-66 exercising the option must:

2-67 (1) within 180 days after the later of the date of  
2-68 exercising its option or the date on which all environmental  
2-69 approvals necessary for the development of the toll project are

3-1 secured and all legal challenges to development are concluded,  
3-2 advertise for the initial procurement of required services,  
3-3 including, at a minimum, design services, for the project; and  
3-4 (2) within two years after the later of the date of  
3-5 exercising its option or the date on which all environmental  
3-6 approvals necessary for the development are secured and all legal  
3-7 challenges to development are concluded, enter into a contract for  
3-8 the construction of the toll project.

3-9 Sec. 373.053. DEPARTMENT OPTION. (a) If the local toll  
3-10 project entity fails or declines to exercise the option to develop,  
3-11 finance, construct, and operate a toll project under Section  
3-12 373.052(a), or fails or declines to advertise for procurement or  
3-13 enter into a construction contract as required by Section  
3-14 373.052(c), the department has the option to develop, finance,  
3-15 construct, and operate the toll project. The department has not  
3-16 more than 60 days after the date the local toll project entity fails  
3-17 or declines to exercise its option under Section 373.052(a) or  
3-18 fails or declines to advertise for procurement or enter into a  
3-19 construction contract as required by Section 373.052(c) to exercise  
3-20 its option.

3-21 (b) If the department exercises its option under Subsection  
3-22 (a), the department after exercising the option must:

3-23 (1) within 180 days after the later of the date of  
3-24 exercising its option or the date on which all environmental  
3-25 approvals necessary for the development of the toll project are  
3-26 secured and all legal challenges to development are concluded,  
3-27 advertise for the initial procurement of required services,  
3-28 including, at a minimum, design services, for the project; and

3-29 (2) within two years after the later of the date of  
3-30 exercising its option or the date on which all environmental  
3-31 approvals necessary for the development are secured and all legal  
3-32 challenges to development are concluded, enter into a contract for  
3-33 the construction of the toll project.

3-34 Sec. 373.054. REINITIATION OF PROCESS. If the process  
3-35 described by Sections 373.051, 373.052, and 373.053 concludes  
3-36 without the local toll project entity or the department entering  
3-37 into a contract for the construction of the toll project, either  
3-38 entity may reinitiate the process under this subchapter by  
3-39 submitting notice to the other entity in the manner provided by  
3-40 Section 373.051.

3-41 Sec. 373.055. WAIVER OF OPTION; ALTERATION OF STEPS OR TIME  
3-42 LIMITS. (a) The department or the local toll project entity may at  
3-43 any time before or during the process established by this  
3-44 subchapter waive or decline to exercise any option, step, or other  
3-45 right under this subchapter that solely benefits that entity by  
3-46 notifying the other entity of its decision in writing.

3-47 (b) The department and the local toll project entity may, by  
3-48 written agreement, alter any other step or time limit under this  
3-49 subchapter, including the timing of or conditions for initiating  
3-50 the process under Section 373.051.

3-51 Sec. 373.056. SHARING OF PROJECT-RELATED INFORMATION.  
3-52 (a) In this section, "project-related information" includes  
3-53 traffic estimates, revenue estimates, plans, specifications,  
3-54 surveys, appraisals, environmental studies, and other work product  
3-55 developed for a toll project.

3-56 (b) On initiation of the process under Section 373.051, the  
3-57 department shall make its project-related information available to  
3-58 the local toll project entity.

3-59 (c) If the local toll project entity fails or declines to  
3-60 exercise an option or fails or declines to advertise for  
3-61 procurement or enter into a construction contract under Section  
3-62 373.052, the local toll project entity shall make its  
3-63 project-related information available to the department.

3-64 (d) On entering into a contract for the construction of the  
3-65 toll project, the department or the local toll project entity, as  
3-66 applicable, shall reimburse the other entity for shared  
3-67 project-related information that it uses.

3-68 (e) Use by an entity of project-related information  
3-69 received by the entity under this section is at the sole risk of the

4-1 receiving entity and does not confer liability on the entity that  
 4-2 furnished the information.

4-3 Sec. 373.057. PROGRESS REPORTS. After the department or  
 4-4 the local toll project entity exercises an option under this  
 4-5 subchapter, the department or the local toll project entity, as  
 4-6 applicable, shall issue a semiannual report on the progress of the  
 4-7 development of the toll project. The report shall be made available  
 4-8 to the public.

4-9 Sec. 373.058. ENVIRONMENTAL REVIEW. (a) The department or  
 4-10 the local toll project entity may begin any environmental review  
 4-11 process that may be required for a proposed toll project before  
 4-12 initiating the process under this subchapter.

4-13 (b) If the local toll project entity initiates the process  
 4-14 for development of a toll project under Section 373.051(a) and has  
 4-15 not begun the environmental review of the project, the local toll  
 4-16 project entity shall begin the environmental review within 180 days  
 4-17 of exercising the option.

4-18 (c) The department or the local toll project entity may  
 4-19 begin development of a toll project before the project receives  
 4-20 environmental clearance but may not begin construction of the  
 4-21 project before the project receives that clearance.

4-22 Sec. 373.059. PROJECT LOCATED IN TERRITORY OF MORE THAN ONE  
 4-23 LOCAL TOLL PROJECT ENTITY. If a toll project is in the territory of  
 4-24 more than one local toll project entity, only the local toll project  
 4-25 entity that first constructed toll projects may exercise the  
 4-26 options and other rights under this subchapter. The local toll  
 4-27 project entity exercising an option or other right under this  
 4-28 section:

4-29 (1) may do so only with respect to the portion of the  
 4-30 project located in the territory of that local toll project entity; and

4-31 (2) shall do so on behalf of another local toll project  
 4-32 entity in whose territory the project will be located if requested  
 4-33 by the other entity after the original entity declines to exercise  
 4-34 its option.

4-35 [Sections 373.060-373.100 reserved for expansion]

4-36 SUBCHAPTER C. USE OF RIGHT-OF-WAY BY LOCAL TOLL PROJECT ENTITY

4-37 Sec. 373.101. USE OF STATE HIGHWAY RIGHT-OF-WAY.

4-38 (a) Consistent with federal law, the commission and the department  
 4-39 shall assist a local toll project entity in the development,  
 4-40 financing, construction, and operation of a toll project for which  
 4-41 the local toll project entity has exercised its option to develop,  
 4-42 finance, construct, and operate the project under Subchapter B by  
 4-43 allowing the local toll project entity to use state highway  
 4-44 right-of-way and to access the state highway system as necessary to  
 4-45 construct and operate the toll project.

4-46 (b) Notwithstanding any other law, a local toll project  
 4-47 entity and the commission may agree to remove the toll project from  
 4-48 the state highway system and transfer ownership to the local toll  
 4-49 project entity.

4-50 Sec. 373.102. REIMBURSEMENT FOR USE OF RIGHT-OF-WAY.

4-51 (a) The commission or the department may not require a local toll  
 4-52 project entity to pay for the use of state highway right-of-way or  
 4-53 access, except:

4-54 (1) to reimburse the department for actual costs  
 4-55 incurred by the department that are owed to a third party, including  
 4-56 the federal government, as a result of that use by the local toll  
 4-57 project entity; and

4-58 (2) as required under Subsection (b).

4-59 (b) A local toll project entity shall reimburse the  
 4-60 department for the department's actual costs to acquire a  
 4-61 right-of-way transferred to the local toll project entity. If the  
 4-62 department is not able to determine that amount, the reimbursement  
 4-63 must be in an amount equal to the average actual historical  
 4-64 right-of-way acquisition values for comparable right-of-way  
 4-65 located in proximity to the project on the date of original  
 4-66 acquisition of the right-of-way.

4-67 (c) In lieu of reimbursement, and at the local toll project  
 4-68 entity's sole option, the local toll project entity may agree to pay  
 4-69 to the department a portion of the revenues of the project, in the

5-1 amount and for the period of time agreed to by the local toll  
 5-2 project entity and the department.

5-3 (d) Money received by the department under this section  
 5-4 shall be deposited in the state highway fund and, except for  
 5-5 reimbursement for costs owed to a third party, used to fund  
 5-6 additional projects in the department district in which the toll  
 5-7 project is located.

5-8 (e) The department shall reimburse a local toll project  
 5-9 entity for any cost of right-of-way acquired by the entity for a  
 5-10 toll project that will be developed, financed, constructed, and  
 5-11 operated by the department.

5-12 (f) The commission or department or the local toll project  
 5-13 entity may waive the requirement of reimbursement under this  
 5-14 section.

5-15 Sec. 373.103. AGREEMENT FOR USE OF RIGHT-OF-WAY. A local  
 5-16 toll project entity and the department shall enter into an  
 5-17 agreement for any toll project for which the entity has exercised  
 5-18 its option to develop, finance, construct, and operate the project  
 5-19 under Subchapter B and for which the entity intends to use state  
 5-20 highway right-of-way. The agreement must contain provisions  
 5-21 necessary to:

5-22 (1) ensure that the local toll project entity's  
 5-23 construction, maintenance, and operation of the project complies  
 5-24 with the requirements of applicable state and federal law; and

5-25 (2) protect the interests of the commission and the  
 5-26 department in the use of right-of-way for operations of the  
 5-27 department, including public safety and congestion mitigation on  
 5-28 the right-of-way.

5-29 Sec. 373.104. LIABILITY FOR DAMAGES. (a) Notwithstanding  
 5-30 any other law, the commission and the department are not liable for  
 5-31 any damages that result from a local toll project entity's use of  
 5-32 state highway right-of-way or access to the state highway system  
 5-33 under this subchapter, regardless of the legal theory, statute, or  
 5-34 cause of action under which liability is asserted.

5-35 (b) An agreement entered into by a local toll project entity  
 5-36 and the department in connection with a toll project that is  
 5-37 developed, financed, constructed, or operated by the local toll  
 5-38 project entity and that is on or directly connected to a highway in  
 5-39 the state highway system does not create a joint enterprise for  
 5-40 liability purposes.

5-41 Sec. 373.105. COMPLIANCE WITH FEDERAL LAW. Notwithstanding  
 5-42 an action taken by a local toll project entity under this  
 5-43 subchapter, the commission or department may take any action that  
 5-44 in its reasonable judgment is necessary to comply with any federal  
 5-45 requirement to enable this state to receive federal-aid highway  
 5-46 funds.

5-47 SECTION 2. Section 228.006, Transportation Code, is amended  
 5-48 by amending Subsection (a) and adding Subsection (a-1) to read as  
 5-49 follows:

5-50 (a) The commission shall authorize the use of surplus  
 5-51 revenue of a toll project or system to pay the costs of a  
 5-52 transportation project, highway project, or air quality project  
 5-53 within a region [~~department district~~] in which any part of the toll  
 5-54 project is located.

5-55 (a-1) The department shall allocate the distribution of the  
 5-56 surplus toll revenue to department districts in the region that are  
 5-57 located in the boundaries of the metropolitan planning organization  
 5-58 in which the toll project or system producing the surplus revenue is  
 5-59 located based on the percentage of toll revenue from users in each  
 5-60 department district of the project or system. To assist the  
 5-61 department in determining the allocation, each entity responsible  
 5-62 for collecting tolls for a project or system shall calculate on an  
 5-63 annual basis the percentage of toll revenue from users of the  
 5-64 project or system in each department district based on the number of  
 5-65 recorded electronic toll collections.

5-66 SECTION 3. Subsection (a), Section 228.011, Transportation  
 5-67 Code, is amended to read as follows:

5-68 (a) This section applies only to a county acting under  
 5-69 Chapter 284 for:

6-1 (1) the widening, expansion, reconstruction, and  
 6-2 continued operation of existing toll projects of the county; or

6-3 (2) [~~and~~] the development, construction, and  
 6-4 operation of all or a portion of any of the following toll projects,  
 6-5 a component of that project, or the functional equivalent of that  
 6-6 project:

6-7 (A) [~~(1)~~] Beltway 8 Tollway East, between US 59  
 6-8 North and US 90 East;

6-9 (B) [~~(2)~~] Hardy Downtown Connector, consisting  
 6-10 of the proposed direct connection from the Hardy Toll Road southern  
 6-11 terminus at Loop 610 to downtown Houston;

6-12 (C) [~~(3)~~] State Highway 288, between US 59 and  
 6-13 Grand Parkway South (State Highway 99);

6-14 (D) [~~(4)~~] US 290 Toll Lanes, between IH 610 West  
 6-15 and the Grand Parkway Northwest (State Highway 99);

6-16 (E) [~~(5)~~] Fairmont Parkway East, between Beltway  
 6-17 8 East and Grand Parkway East (State Highway 99);

6-18 (F) [~~(6)~~] South Post Oak Road Extension, between  
 6-19 IH 610 South and near the intersection of Beltway 8 and Hillcroft in  
 6-20 the vicinity of the Fort Bend Parkway Tollway;

6-21 (G) [~~(7)~~] Westpark Toll Road Phase II, between  
 6-22 Grand Parkway (State Highway 99) and FM 1463;

6-23 (H) [~~(8)~~] Fort Bend Parkway, between State  
 6-24 Highway 6 and the Brazos River; and

6-25 (I) [~~(9)~~] Montgomery County Parkway, between  
 6-26 State Highway 242 and the Grand Parkway (State Highway 99), and if  
 6-27 the Grand Parkway project has not begun construction, a nontolled  
 6-28 extension of the Montgomery County Parkway to allow a connection to  
 6-29 Interstate Highway 45.

6-30 SECTION 4. Section 228.012, Transportation Code, is amended  
 6-31 to read as follows:

6-32 Sec. 228.012. PROJECT SUBACCOUNTS. (a) The department  
 6-33 shall create a separate account in the state highway fund to hold  
 6-34 payments received by the department under a comprehensive  
 6-35 development agreement and [~~7~~] the surplus revenue of a toll project  
 6-36 or system [~~, and payments received under Sections 228.0111(g)(2) and~~  
 6-37 ~~(i)(2)]. The department shall create subaccounts in the account~~  
 6-38 ~~for each project, system, or region. Interest earned on money in a~~  
 6-39 ~~subaccount shall be deposited to the credit of that subaccount.~~

6-40 (b) The department shall hold money in a subaccount in trust  
 6-41 for the benefit of the region in which a project or system is  
 6-42 located and may assign the responsibility for allocating money in a  
 6-43 subaccount to a metropolitan planning organization in which the  
 6-44 region is located. Money [~~Except as provided by Subsection (c),~~  
 6-45 ~~money]~~ shall be allocated to projects authorized by Section  
 6-46 228.0055 or Section 228.006, as applicable.

6-47 (c) [~~Money in a subaccount received from a county or the~~  
 6-48 ~~department under Section 228.0111 in connection with a project for~~  
 6-49 ~~which a county acting under Chapter 284 has the first option shall~~  
 6-50 ~~be allocated to transportation projects located in the county and~~  
 6-51 ~~the counties contiguous to that county.~~

6-52 [~~(d)~~] Not later than January 1 of each odd-numbered year,  
 6-53 the department shall submit to the Legislative Budget Board, in the  
 6-54 format prescribed by the Legislative Budget Board, a report on cash  
 6-55 balances in the subaccounts created under this section and  
 6-56 expenditures made with money in those subaccounts.

6-57 (d) [~~(e)~~] The commission or the department may not:

6-58 (1) revise the formula as provided in the department's  
 6-59 unified transportation program or a successor document in a manner  
 6-60 that results in a decrease of a department district's allocation  
 6-61 because of the deposit of a payment into a project subaccount [~~or a~~  
 6-62 ~~commitment to undertake an additional transportation project under~~  
 6-63 ~~Section 228.0111]; or~~

6-64 (2) take any other action that would reduce funding  
 6-65 allocated to a department district because of the deposit of a  
 6-66 payment [~~received from the department or local toll project entity]~~  
 6-67 ~~into a project subaccount [or a commitment to undertake an~~  
 6-68 ~~additional transportation project under Section 228.0111].~~

6-69 SECTION 5. Subsection (b), Section 284.004, Transportation

7-1 Code, is amended to read as follows:

7-2 (b) In addition to authority granted by other law, a county  
7-3 may use state highway right-of-way and may access state highway  
7-4 right-of-way in accordance with Sections 228.011, 373.101, and  
7-5 373.102 [~~228.0111~~].

7-6 SECTION 6. Subsection (d), Section 284.061, Transportation  
7-7 Code, is amended to read as follows:

7-8 (d) Subject to the reimbursement requirements of Section  
7-9 373.102, a [A] county has full easements and rights-of-way through,  
7-10 across, under, and over any property owned by this state that are  
7-11 necessary or convenient to construct, acquire, or efficiently  
7-12 operate a project under this chapter.

7-13 SECTION 7. Subsection (c), Section 366.170, Transportation  
7-14 Code, is amended to read as follows:

7-15 (c) An authority has full easements and rights-of-way  
7-16 through, across, under, and over any property owned by the state or  
7-17 any local governmental entity that are necessary or convenient to  
7-18 construct, acquire, or efficiently operate a turnpike project or  
7-19 system under this chapter. This subsection does not affect the  
7-20 obligation of the authority under other state law, including  
7-21 Section 373.102, to compensate or reimburse the state for the use or  
7-22 acquisition of an easement or right-of-way on property owned by or  
7-23 on behalf of the state. An authority's use of property owned by or  
7-24 on behalf of the state is subject to any covenants, conditions,  
7-25 restrictions, or limitations affecting that property.

7-26 SECTION 8. Subsection (c), Section 370.169, Transportation  
7-27 Code, is amended to read as follows:

7-28 (c) An authority has full easements and rights-of-way  
7-29 through, across, under, and over any property owned by the state or  
7-30 any local government that are necessary or convenient to construct,  
7-31 acquire, or efficiently operate a transportation project or system  
7-32 under this chapter. This subsection does not affect the obligation  
7-33 of the authority under other law, including Section 373.102, to  
7-34 compensate or reimburse this state for the use or acquisition of an  
7-35 easement or right-of-way on property owned by or on behalf of this  
7-36 state. An authority's use of property owned by or on behalf of this  
7-37 state is subject to any covenants, conditions, restrictions, or  
7-38 limitations affecting that property.

7-39 SECTION 9. Subchapter A, Chapter 371, Transportation Code,  
7-40 is amended by adding Section 371.003 to read as follows:

7-41 Sec. 371.003. VALUATION DETERMINATION. Any determination  
7-42 of value, including best value, under applicable federal or state  
7-43 law for a comprehensive development agreement or other  
7-44 public-private partnership arrangement involving a toll project  
7-45 must take into consideration any factors the toll project entity  
7-46 determines appropriate, including factors related to:

- 7-47 (1) oversight of the toll project;
- 7-48 (2) maintenance and operations costs of the toll  
7-49 project;
- 7-50 (3) the structure and rates of tolls;
- 7-51 (4) economic development impacts of the toll project;
- 7-52 and
- 7-53 (5) social and environmental benefits and impacts of  
7-54 the toll project.

7-55 SECTION 10. The heading to Section 371.052, Transportation  
7-56 Code, is amended to read as follows:

7-57 Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD [AND  
7-58 STATE AUDITOR].

7-59 SECTION 11. Section 228.0111 and Subsection (c), Section  
7-60 371.052, Transportation Code, are repealed.

7-61 SECTION 12. Section 228.012, Transportation Code, as  
7-62 amended by this Act, applies only to payments received by the Texas  
7-63 Department of Transportation under that section on or after the  
7-64 effective date of this Act. Payments received by the department  
7-65 under Section 228.012, Transportation Code, before the effective  
7-66 date of this Act are governed by the law in effect immediately  
7-67 before the effective date of this Act, and that law is continued in  
7-68 effect for that purpose.

7-69 SECTION 13. The repeal of Section 228.0111, Transportation

8-1 Code, by this Act does not affect any project agreement, agreement  
8-2 regarding a negotiated value, market value agreement, market  
8-3 valuation waiver agreement, memorandum of understanding regarding  
8-4 market valuation, letter agreement regarding market valuation  
8-5 analysis, advance funding agreement, or other agreement entered  
8-6 into between the Texas Department of Transportation and a local  
8-7 toll project entity, or any resolution or minute order adopted by  
8-8 the department or a local toll project entity, under that repealed  
8-9 section. If a waiver of market valuation or waiver of first option  
8-10 to develop, finance, construct, or operate a toll project is  
8-11 withdrawn or terminated subsequent to the effective date of this  
8-12 Act, the department and the local toll project entity have the  
8-13 rights regarding the applicable project as exist under Chapter 373,  
8-14 Transportation Code, as added by this Act.

8-15 SECTION 14. This Act takes effect immediately if it  
8-16 receives a vote of two-thirds of all the members elected to each  
8-17 house, as provided by Section 39, Article III, Texas Constitution.  
8-18 If this Act does not receive the vote necessary for immediate  
8-19 effect, this Act takes effect September 1, 2011.

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